MISCELLANY.

Postponement of Jury's Gastronomical Satisfaction as Affecting Verdict.—In Louisville, etc., R. Co. *v.* Johnson, 85 So. 372, the Supreme Court of Alabama said: "The jury, after being out about six hours, reported to the court that they were unable to agree on the amount of their verdict for the plaintiff, and that they were 'awful hungry' and would like to get off 'some way or other.' The court sent them back for further deliberation, with an exhortation to try and reach a conclusion. Defendant's counsel excepted to 'their being in the jury room six hours without eating, and to their being sent back.' We cannot hold the action of the trial court as erroneous or improper. While a sentimental philosopher has asserted that 'hope deferred maketh the heart sick,' it can hardly be assumed that a brief postponement of their gastronomical satisfaction operated as coercive cruelty upon the minds of the jury, so as to affect or restrain the freedom of their verdict. Moreover, the record shows that upon their second report of their inability to agree, they were allowed to dine, whereupon they deliberated again, and agreed."

Surgeon's Right to Make Exploratory Incision.—A woman who was unable to bear children interviewed a surgeon concerning her condition and gave him her family physician's view as to what caused her trouble. She also told him that she "wanted to be fixed so that she could bear children." After being examined she was told to go to the hospital, where the surgeon put her under an anæsthetic and operated upon her. He made an abdominal incision, and found conditions that required the removal of certain diseased organs and contiguous infected tissues. She brought an action against the surgeon because of the operation and recovered judgment, which was reversed by the Supreme Court of Oklahoma in King *v.* Carney, 204 Pacific Reporter, 270. In discussing the right of the surgeon to perform the operation, Judge Kane said:

"Her specific directions to the doctor, as stated by herself, were: 'I want to be fixed so I can bear children, and we will never be happy without that.' These directions, it seems to us, not only authorized the doctor to cure her condition is possible, but by clear implication authorized the doctor to diagnose her case for the purpose of discovering for himself the exact cause of her sterility, and to make whatever exploratory incisions might be necessary to accomplish this purpose.

"It is quite clear that making the initial incision in plaintiff's abdomen was a proper and necessary step along this line. And the mere fact that the plaintiff may have believed or had been advised by her family physician that her condition was caused by laceration of the uterus did not relieve the operating surgeon of the duty of discovering for himself the cause of the physical defect he was called upon to remedy."

Degrading Improbable Testimony.—A veteran judge is reported to have said that when he first went on the bench he believed everything that was sworn to, but that by the time he retired he did not believe anything. While some of the things which are solemnly sworn to in court would tend to produce such an attitude, the appellate courts hesitate to reject positive testimony because of its inherent improbability. A judge of long experience learns that truth is stranger than fiction. "We know that there are happenings exceedingly strange and apparently against all our preconceived ideas of their possibility." Highfill *v.* Missouri Pac. R. Co., 93 Mo. App. 219. "If evidence is to be always disbelieved because the story told seems remarkable or impossible, then a party whose rights depend on the proof of some fact out of the usual course of events will always be denied justice simply because his story is improbable." Marston *v.* Dresen, 85 Wis. 530, 55 N. W. 896. The same court in answer to an argument that certain testimony was contrary to common sense, made an observation which every person complacently sure of his own inherited opinions should paste in his hat: "What is thought to be common sense is frequently nothing more than a fixed belief based on no evidence and supported by no reasons, and it then ordinarily lacks the certainty requisite for the annihilation of positive evidence to the contrary." Winkler on Power, etc., Machinery Co., 141 Wis. 244, 124 N. W. 273. But despite this modest and tolerant attitude of the courts, testimony is sometimes given which they deem beyond credence. Thus, the judges being men of mature age know that the strength and agility of a Carpentier or a Dempsey do not survive in declining years, and have refused to credit testimony that a man sixty-seven years of age and weighing 175 pounds threw a man weighing 165 pounds seven feet. Peterson *v.* Liddington, 60 Ind. App. 41, 108 N. E. 977. In like manner they are very sure that there are no longer giants in the land. Hunter *v.* New York, etc., R. Co., 116 N. Y. 615, 23 N. E. 9, 6 L. R. A. 246. In that case a railroad brakeman testified that while sitting on top of a freight car he was struck by a brick arch four feet and seven inches above the top of the car. The court said: "It can be asserted, I think, without contradiction, that a man whose forehead would be four feet seven inches above a seat upon which he was sitting would have a frame at least nine feet high. History affords no authenticated instance of men attaining such height. Buffon, in his Natural History, records instances of men attaining extraordinary height, but modern writers do not accept his statements. Pliny tells of an Arabian nine feet high, but the story is not authenticated. In an article upon 'Giants' in the Encyclopedia Britannica, it is stated that the tallest man whose statute has been authentically reported was Frederick the Great's Scotch giant, who was eight feet three inches tall. In the College of Surgeons in London, there is a skeleton of an Irishman, who was named Charles Bierne, which measures eight feet high. Such heights are of rare occurrence, and the height of nine feet has proba-

bly never been attained by man. Suppose the proof had shown that upon approaching the entrance to the tunnel the plaintiff was standing up and his body had been found between the entrance and the west end of the arch, would it be assumed that his head had struck the roof of the tunnel, which would have been eight feet ten inches above the top of the car. In other words, would the court, to sustain the judgment, assume him to have been over eight feet and ten inches in height. Yet that assumption would call for no greater exercise of the imagination than to suppose his head to have reached the bottom of the arch when he was in a sitting posture. To assume either fact requires us to believe that the plaintiff was nearly, if not fully, nine feet in height. I think, therefore, the court may take judicial notice of the fact than a man could not strike his head against an obstruction four feet and seven inches above the place on which he was sitting, and that being so, the negligence of the defendant was not established."

The judges are, however, far enough removed from their infancy that they are not very sure as to what a young child can do. In Chrystal *v.* Troy, etc., R. Co., 105 N. Y. 164, 11 N. E. 380, the court refused to disturb a finding which rested on the theory that a child of seventeen months, that had just been fed and put to sleep, rose, climbed over a chair which had been placed to obstruct the open door, went down the steps, crawled through a six-inch space under the gate and passed down the street eighty feet to a railroad track where he was hurt accomplishing this feat in eight minutes. Surely that child if left uninjured would have grown to a height of nine feet.

In Louisville, etc., R. Co. *v.* Chambers, 165 Ky. 703, 178 S. W. 1041, Ann. Cas. 1917B, 471, it appeared that a railroad car went off the end of a switch track, and demolished a fence in front of a residence, but did not strike or injure the house. A woman sleeping in the house at the time testified that by the shock she was thrown over the foot of the bed, which was two feet higher than the mattress, and was injured by the fall. The court said: "We are firmly convinced that Mrs. Mahala Chambers could not have been, as she testified, thrown from her position on the bed, over the foot thereof, two feet higher than the mattress, and on to a rocking chair near the foot thereof. Such an occurrence is inherently impossible; there was no force there present and operating such a result; and her testimony in that respect is impeached by all the physical facts, concerning which there is and can be no dispute.

In Louisville Water Co. *v.* Lally, 168 Ky. 348, 182 S. W. 186, L. R. A. 1916D, 300, it was claimed that the plaintiff's premises were flooded and injured by the sudden and violent turning on of the water after it had been shut off and it appeared that a faucet at the wash basin was open to such an extent as to require two or three turns to close it. The court said: "Neither the pleadings nor the proof afford any reasonable explanation of how that faucet could have been turned on by the return of the water into the pipes when turned on by appellant, and

we are unable to imagine how that could have done it. The only explanation, consistent with physical and mechanical laws with which we are familiar, that we are able to imagine, is that appellee, or some member of his family, left the faucet turned on, and that the waste pipe from the basin was obstructed in some way, which prevented the water from escaping through the waste pipe as fast as it came through the faucet, and that the overflow was caused in this way. We have been unable to discover the scintilla of evidence of negligence upon the part of appellant that would justify the court in overruling its motion for a peremptory instruction at the close of appellant's testimony. The evidence in this case can supply the necessary scintilla only by the indulgence in the theory that the force with which appellant turned the water into the pipes opened the faucet by unscrewing it at the washstand, and that would be to suppose a circumstance inherently impossible and absolutely at variance with well established and universally recognized physical and mechanical laws. Water may be turned into pipes with sufficient force to burst them or tear off fixtures such as the faucet, but not so as to unscrew the faucet."

The cases make it very clear that gross injustice would be done in some instances if a verdict was final on questions of fact, for in the clearest of the cases of physical impossibility the jury found that the impossible had happened. A jury, presumably honest and intelligent, looked at brakeman Hunter and decided that he was nine feet tall. A jury found that by the shock of breaking the front fence, Mrs. Chambers was flung bodily over the footboard of her bed. But there are other cases in which great caution must be used in assuming an impossibility. A person alighting from a street car or attempting to get on will ordinarily be thrown backward and not forward by the sudden starting of the car, but is it incredible that he should be thrown forward? Courts have held that it is. Daniels *v.* Kansas City El. R. Co., 177 Mo. App. 280, 164 S. W. 154; Bollinger *v.* Interurban St. R. Co., 50 Misc. 293, 98 N. Y. S. 641. Other courts in the same jurisdiction have taken a different view. Klass *v.* Metropolitan St. R. Co., 169 Mo. App. 617, 155 S. W. 57; Basting *v* Brooklyn Heights R. Co., 39 App. Div. 629, 57 N. Y. S. 119. The better reason seems to be with the latter view, because the muscular efforts of the victim to catch his balance introduce an unknown factor whose effects cannot be calculated with the precision which is possible where a force acts on an inanimate body.

There is a long line of cases which hold that no credence is to be given to a witness who testifies that he looked and did not see an approaching railroad train of which he had an unobstructed view or some other object of "high visibility." But that rule is applicable only in a very clear case. "When one says he looked and did not see an object, which if he had looked he, in the nature of things, must have seen, he cannot be credited if he says h did not see the object; but that conclusion cannot be adopted or applied when by reason of the

surrounding conditions it was possible for him to look and still not see it." Baltimore, etc., R. Co. *v.* Hendricks, 104 Md. 76, 64 Atl. 304. And even apart from possible obstructions or distractions, there is a mental element which is not calculable. Every man can recall instances in his own experience of unaccountable lapses of observation, and it is to be remembered that in the cases under discussion the question was whether the person looked, not whether the object to be observed was actually there. "It is familiar to everyone, that when the mind is closely occupied, numerous objects may pass before our eyes, and circumstances may be talked of in our hearing, of which we do not retain the slightest recollection; and this is often in such a degree as implies, not a want of memory only, but an actual want of perception of the objects. We cannot doubt, however, that there was the sensation of them; that is, the usual impression made upon the eye in the one case, and the ear in the other. What is wanting is a certain effort of the mind itself, without which sensation is not necessarily followed by perception. This voluntary effort, which is required for that degree of perception which leaves an impression on the mind, is called attention." Abercrombie, The Intellectual Powers, Pt. II, § 1. And see 2 Moore on Facts, p. 740.

The court, establishing a rule for themselves without legislative interference, have, it would seem, preserved a very even balance leaving questions of probability to the jury and interposing only in cases of manifest absurdity.

Law Notes.

Wood Alcohol Not an Intoxicating Beverage.—Those of us who have been readers of the daily newspapers during the dry régime following the Volstead Act have become more or less familiar with the term "wood alcohol," and many of us may have wondered whether or not it should be classed as an intoxicating liquor. From the news reports we learned that it had a deadly effect, but from the law reports we learn that it is not an intoxicating liquor. See Hamilton *v.* State, 133 Northeastern Reporter, 491. The prosecution in this case was for a violation of the prohibition law, based on a sale of one-half pint of wood alcohol. The Supreme Court of Indiana in reversing the conviction reviewed numerous decisions involving the properties of wood alcohol. Judge Willoughby wrote the opinion, from which we quote as follows:

"In the instant case there is no evidence tending in any manner to show a sale of anything except wood alcohol. It is not alleged, and is not proven, that wood alcohol had ever been used as a beverage or sold as a beverage, or that it is a liquor reasonably likely or intended to be used as a beverage.

"The passage of the prohibition law was brought about to put an end to what was recognized as a great evil. The evil sought to be

remedied by this statute was the use of intoxicating liquor as a beverage. We cannot believe that it was the intention of the Legislature to stop the sale of, and the use of, alcohol, either grain or wood alcohol, for other than beverage purposes."

JOHN DOE—IN MEMORIAM.

John Doe is dead, the good old man
Who's stood before the bar
A criminal since time began,
Wherever courtrooms are.
No jot of reverence or awe
The rascal has displayed;
He's broken every single law
That ever has been made.

Policemen, running down a crime,
Have hunted high and low,
And always in the course of time
Have brought in old John Doe.
He's burgled, pillaged, forged and slain,
He's perjured, robbed and lied,
His yearning for ill-gotten gain
Was never satisfied.

In every prison that there is,
In dungeons deep and dark,
That ever busy hand of his
Has carved its well-known mark.
No judge has ever served a term
On benches here below,
Who's not, in accents clear and firm,
Passed sentence on John Doe.

And now he's dead—for Mr. Taft,
In one judicial breath,
Has swept this famous King of Graft
To dim and dusty death.
The law for his time-honored name
Has no official use.
And so he's dead, but just the same
We'll miss him like the deuce.
—James J. Montague in *St. Louis Post-Dispatch.*

John Doe has passed. The man who gassed
So much of legal lore,
In civil suit and criminal to boot,
Has gone the Outer Door.

He needs must die for all must lie
In the dust at last;
But tho' he's gone to oblivion's morn
His glory is not past.

His convenient name remains to fame
Though judicially dead;
He made his mark in many a lark
Ere his spirit fled.

How many points all out of joints
His cases did ferment;
How many jaunts in judicial haunts
His going will prevent.

In a thousand books—stern judicial nooks—
He emblazoned his name;
And while men delve on the legal shelve
It will remain to fame.

B. S.

Right to Control and Regulate Beverages—Anti-Prohibition Argument with Historical Facts and Figures.—In Herman *v.* State, 8 Ind. 545, 558, decided in 1855 the court said:

"The right of liberty and pursuing happiness secured by the constitution, embraces the right, in each compos mentis individual, of selecting what he will eat and drink, in short, his beverages, so far as he may be capable of producing them, or they may be within his reach, and that the legislature cannot take away that right by direct enactment. If the constitution does not secure this right to the people, it secures nothing of value. If the people are subject to be controlled by the legislature in the matter of their beverages, so they are as to their articles of dress, and in their hours of sleeping and waking. And if the people are incompetent to select their own beverages, they are also incompetent to determine anything in relation to their living. and should be placed at once in a state of pupilage to a set of government sumptuary officers; eulogies upon the dignity of human nature should cease; and the doctrine of the competency of the people for self-government be declared a deluding rhetorical flourish. If the government can prohibit any practice it pleases, it can prohibit the drinking of cold water. Can it do that? If not, why not? If we are right in this, that the constitution restrains the legislature from passing a law regulating the diet of the people, a sumptuary law (for that under consideration is such, no matter whether its objects be morals or economy, or both), then the legislature cannot prohibit the manufacture and sale, for use as a beverage, of ale, porter, beer, etc., and

cannot declare those manufactured, kept and sold for that purpose, a nuisance, if such is the use to which those articles are put by the people. It all resolves itself into this, as in the case of printing, worshipping God, etc. If the constitution does not protect the people in the right, the legislature may probably prohibit; if it does, the legislature cannot. We think the constitution furnishes the protection. If it does not in this particular, it does, as we have said, as to nothing of any importance, and tea, coffee, tobacco, cornbread, ham and eggs, may next be placed under the ban. The very extent to which a concession of the power in this case would carry its exercise, shows it cannot exist. We are confirmed in this view when we consider that at the adoption of our present constitution, there were in the State fifty distilleries and breweries, in which a half a million of dollars was invested, and five hundred men were employed; which furnished a market annually for two million bushels of grain, and turned out manufactured products to the value of a million of dollars, which were consumed by our people, to a great extent, as a beverage. With these facts existing, the question of incorporating into the constitution the prohibitory principle was repeatedly brought before the constitutional convention and uniformly rejected. Debates in the Conv. vol. 2, pp. 1, 434 and others. We are further strengthened in this opinion when we notice, as we will as matter of general knowledge, the universality of the use of these articles as a beverage. It shows the judgment of mankind as to their value.

"This use may be traced in several parts of the ancient world. Pliny, the naturalist, states that in his time it was in general use amongst all the several nations who inhabited the western part of Europe; and according to him, it was not confined to those northern countries whose climate did not permit the successful cultivation of the grape. He mentions that the inhabitants of Egypt and Spain used a kind of ale; and says that, though it was differently named in different countries, it was universally the same liquor. See Plin. Nat. Hist. Lib. 14, c. 22. Herodotus, who wrote five hundred years before Pliny, tells us that the Egyptians used a liquor made of barley. (2,77.) Dion Cassius alludes to a similar beverage among the people inhabiting the shores of the Adriatic. Li. 49, De Pannoniis. Tacitus states that the ancient Germans, for their drink, used a liquor from barley or other grain, and fermented it so as to make it resemble wine. Tacitus De Mor. Germ., c. 23. Ale was also the favorite liquor of the Anglo-Saxons and Danes. 'If the accounts given by Isidorus and Orosius of the method of making ale amongst the ancient Britons be correct, it is evident that it did not essentially differ from our modern brewing. They state 'that the grain is steeped in water and made to germinate; it is then dried and ground, after which it is infused in a certain quantity of water, which is afterwards fermented.' Henry's Hist. of Eng. vol. 2, p. 264. 'In early periods of the history of England. ale and bread

appear to have been considered equally victuals or absolute necessaries of life.' "

In Biblical history we are told that the "vine, a plant which bears clusters of grapes, out of which wine is pressed," so abounded in Palestine that almost every family had a vineyard. Solomon, said to be the wisest man, had extensive vineyards which he leased to tenants. Song 8, verse 12; and David, in his 104th psalm, in speaking of the greatness, power, and works of God, says, verses 14 and 15, "He causeth grass to grow for the cattle, and herb for the service of man; and wine that maketh glad the heart of man, and oil to make his face shine, and bread, which strengtheneth man's heart."

It thus appears, if the inspired psalmist is entitled to credit, that man was made to laugh as well as weep, and that these stimulating beverages were created by the Almighty expressly to promote his social hilarity and enjoyment. And for this purpose has the world ever used them; they have ever given, in the language of another passage of scripture, strong drink to him that was weary and wine to those of heavy heart. The first miracle wrought by our Savior, that at Cana of Galilee, the place where he dwelt in his youth, and where he met his followers, after his resurrection, was to supply this article to increase the festivities of a joyous occasion; that he used it himself is evident from the fact that he was called by his enemies a winebibber; and he paid it the distinguished honor of being the eternal memorial of his death and man's redemption.

From De Bow's compendium of the census of 1850, p. 182, we learn that at that date there were in the United States 1,217 distilleries and breweries, with a capital of 8,507,574 dollars, consuming some 18,000,000 bushels of grain and apples, 1,294 tons of hops, and 61,675 hogsheads of molasses, and producing some 83,000,000 gallons of liquor.

From the secretary of the Treasury's report of the commerce and navigation of the United States for 1850, we gather that there were imported into the United States, in that year, about 15,000,000 gallons of various kinds of liquor.

By the National Cyclopædia, vol. 12, p. 934, we are informed that for the year ending January 5, 1850, there were imported into Great Britain and Ireland 7,970,067 gallons of wine, 4,950,781 of brandy, and 5,123,148 of rum; and that there were manufactured in the same period, in that kingdom, in round numbers, 25,000,000 gallons.

In the 6th vol. of the same work, p. 328, it is said:

"The vine is one of the most important objects of cultivation in France. The amount of land occupied by this culture is about 5,000,000 English acres. The average yearly product is about 926,000,000 English gallons, of which about one-sixth is converted into brandy. The annual produce of the vineyards is estimated at about 28,500,000 sterling [near 140,000,000 dollars], of which ten-elevenths is consumed in France." Wine is the common beverage of the people of France, and

yet Professor Silliman, of Yale College, on the 17th of April, 1851, then at Chalons, writes:

"In traveling more than 400 miles through the rural districts of France, we have seen only a quiet, industrious population, peaceable in their habits, and, as far as we had intercourse with them, courteous and kind in their manners. We have seen no rudeness, no broil or tumult—have observed no one who was not decently clad or who appeared to be ill fed. We are told, however, that the French peasantry live upon very small supplies of food, and in their houses are satisfied with very humble accommodations. Except in Paris, we have seen no instance of apparent suffering, and few even there; nor have we seen a single individual intoxicated or without shoes and stockings." Vol. 1, p. 185, of his Visit to Europe.

We have thus shown, from what we will take notice of historically, that the use of liquors, as a beverage, and article of trade and commerce, is so universal that they cannot be pronounced a nuisance. The world does not so regard them, and will not till the Bible is discarded, and an overwhelming change in public sentiment, if not in man's nature, wrought. And who, as we have asked before, is to force the people to discontinue the use of beverages?

Counsel say the maxim that you shall so use your own as not to injure another, justifies such a law by the legislature. But the maxim is misapplied; for it contemplates the free use, by the owner, of his property, but with such care as not to trespass upon his neighbor; while this prohibitory law forbids the owner to use his own in any manner, as a beverage. It is based on the principle that a man shall not use at all for enjoyment what his neighbor may abuse, a doctrine that would, if enforced by law in general practice, annihilate society, make eunuchs of all men, or drive them into the cells of the monks, and bring the human race to an end, or continue it under the direction of licensed county agents.

"Such, however, is not the principle upon which the Almighty governs the world. He made man a free agent, and to give him opportunity to exercise his will, to be virtuous or vicious as he should choose, he placed evil as well as good before him, he put the apple into the garden of Eden, and left upon man the responsibility of his choice, made it a moral question, and left it so. He enacted as to that, a moral, not a physical prohibition. He could have easily enacted a physical prohibitory law by declaring the fatal apple a nuisance and removing it. He did not. His purpose was otherwise, and he has since declared that the tares and wheat shall grow together to the end of the world. Man cannot, by prohibitory law, be robbed of his free agency. See Milton's Areopagitica, or Speech for Liberty of Unlicensed Printing, Works, vol. 1, p. 165."

Juries and Newspapers.—No subject can be of greater concern to a people than the administration of the criminal law in their midst.

Upon this depends the security of both life and property. Criminal trials in the United States, especially those of importance, have long been a subject of just criticism.

Several years ago, ex-President, now Chief Justice, Taft, than whom no one is more competent to sit in discriminating judgment, expressed the conviction that our administration of the criminal law is a national disgrace. The notoriety attending upon some recent criminal causes offers justification for a renewed consideration of certain phases of the subject-matter.

The system of trial by jury is firmly intrenched in our jurisprudence. It is a most salutary safeguard of the rights of a free people. Impartiality and unanimity have ever been its predominate characteristics. The possibility of the one in any case of magnitude and the reason for the other in any case at all, other than capital, seem seriously to be challenged.

There is a growing disposition to bring about the trial of important cases in the newspapers, both before and while they are being heard in the regularly constituted judicial tribunals. In this wise the asserted guilt or innocence of an accused, as the same may have appealed to them, is ruthlessly exploited by newspaper men in their unceasing effort to crowd their columns with matter which will sell their various editions.

Even during the course of a protracted trial, when modesty would seem to forbid the assumption of the jury's prerogative, the boldly announced opinion of some more or less partisan reporter respecting the truth or falsity of testimony being adduced is given publicity in keeping with the appetite of a horde of readers ever hungry for the sensational. The result is that no jury in a case of notoriety can be kept from the sinister influence of expressed conviction.

If the panel is not fed on reiterated opinion, seemingly emanating from disinterested sources, previously to being called to the box, it is confronted with it from day to day during the progress of the trial, Jurors are only human. They are curious as to the varying reactions produced by controverted questions of fact. With no intention of wrongdoing, but almost unconsciously they will be induced to scrutinize newspaper accounts of trial happenings.

Not infrequently, too, jurors will be found who are prone to ease themselves from burdensome responsibility. They will follow and act upon announced conclusions voiced by others standing in an apparently disinterested attitude. Through these processes, the flamboyant publication of matters occurring during the trial, particularly when accompanied, as is frequently the case, by favorable comment, is plainly calculated to enlist the attention of the juror and almost as plainly calculated to affect his judgment and mar his impartial and individual consideration of the cause.

To suppose that complete justice can be attained under such conditions is to disregard the obvious and expect the well-nigh impossi-

ble. Under constitutional guaranties of free speech the courts seem to be powerless in the premises.

The remedy therefore lies with the newspapers. They must forego the privilege they have arrogated to themselves to sit in judgment on criminal causes. They must cease trying cases in the public journals.

If justice is to be done and right is to prevail, if the menace of mistrials with its accompanying criticism of law enforcement is to be removed, juries must be accorded full and free opportunity of reaching just conclusions untrammeled by newspaper suggestion.

Hon. Benjamin F. Bledsoe,
Judge of United States District in *Los Angeles Times.*

Married Man Marries Married Woman.—While the above title indicates a rather bigamous condition, it represents a state of affairs that required the Bronx county court to pass on the status of the man in the case. Upon being arraigned, he pleaded guilty to an indictment for bigamy, and while awaiting sentence his counsel called the attention of the court to the fact that, while accused was lawfully married at the time he entered into the second marriage, the woman to whom he was married was also lawfully married at the same time. The question that then arose was whether or not he could be guilty of bigamy by entering into a marriage with a woman who was incapable of contracting a valid marriage because of her own existing marriage.

Judge Gibbs, who wrote the opinion in People *v.* Maufredonio, 191 New York Supplement, 748, found it necessary to go to the English cases for authorities on the question, a number of which were reviewed before reaching a decision, which was, in effect, that under the state laws a person, being legally married, who goes through a marriage ceremony recognized by the law of the state with another person, whether the other is legally capable of entering into the marriage contract or not, is guilty of the crime of bigamy.

The Ku Klux Klan—Anti-Klan Literature Allowed.—The recreated Ku Klux Klan has been much in the limelight lately. It has been violently attacked and warmly defended. Whatever may be one's opinion of the rejuvenated or revived Klan there is no shadow of a doubt that the original Klan was a blessing—in disguise if you please. Its prime purpose was to preserve the dominant white race in the South and save from total obliteration Southern civilization. It did its work so well that even African intelligence soon learned that freedom from slavery did not mean social equality with their former masters, and that liberty was not license. That the new Klan which claims to be a purely patriotic organization for the purification of American politics is far from being weak is evidenced by the recent campaigns in Oregon and Texas where the candidates supported by the Klan polled a surprising vote. That the Congress of the United States refused to investigate its "pernicious activities" and that the

Secret Service Department of the Government could find no evidence of its unlawfulness which would debar its literature from the mails is well known. However this may be, a society called the National Association for the Advancement of Colored People, whose aims are not quite clear, continues its fight upon the Klan.

Certain circulars purporting to be published by the Association and entitled "Stop the Ku Klux Propaganda in New York," which made an appeal to the public not to encourage what was asserted to be an effort to glorify, through the medium of a motion picture, the society which, it was claimed, had as its main object the stirring up of prejudice and animosity against certain races and religions throughout the country, were handed out in front of a theater in New York city in which the obnoxious motion picture was being exhibited. Those distributing the circulars were placed under arrest, charged with violating a city ordinance forbidding distribution of handbills, circulars, and other advertising matter, and were convicted.

The conviction was reversed by the New York Court of General Sessions of the Peace of New York County, in People *v.* Johnson, 191 N. Y. S., 750, in which case it was held that the ordinance only related to commercial and business advertising matter. In discussing the purposes of the ordinance it was said:

"The primary purpose of the ordinance which it is claimed was violated by these defendants was to prevent the littering of streets with commercial advertising, such as a merchant or shopkeeper might send forth for the purpose of aiding the sale of purchasable commodities. The ordinance, within reasonable limits, is a proper one, and should be sustained; but no city ordinance, no matter how worthy its intendment, should be permitted in any way to curtail any of the fundamental rights of the citizen.

"The circular in question was a protest against what was believed to be a movement which encouraged discrimination against certain classes of citizens because of race, color, or religious beliefs, and, whether or not there was a sound basis for that belief, they were within their rights in making public their protest against such a movement, and to make known their protest they used possibly the only means available, by the distribution of circulars and pamphlets to the public."

Jury Service as an Oasis in the Desert.—In the days when knighthood was in flower, the poets are wont to remind us of the exquisite tortures which a cavalier would endure for the love of a fair woman. But, in this dark age of prohibition, what tortures and agonies will a twentieth century gentleman endure for one little quaff of the nectar made only for the gods? Some have lied to their physicians, some have stolen, have murdered, some have even left their native shores, while others, alack, have fallen afoul of the Volsteadians. But be of good cheer. The Supreme Court of Washington, in State *v.* Burcham,

187 Pacific Reporter, 352, points a way to an oasis where the thirsty may indulge legally and without hazard. The court advises serving on the jury; for in the above-mentioned case the judges hold that, in a prosecution for unlawfully having in possession intoxicating liquors, it was not error to send to the jury room twenty-four bottles which had been introduced in evidence, nor was it error for the jury to smell and sample it.

Another Hole Punched in the Volstead Act!—It will be equally interesting to rural and urban justices and the parched throats of the panting bystanders to read the following headnote in the recent case of Price *v.* Commonwealth (Va.), 110 S. E. 349:

"Where a justice of the peace under proper writs has caused liquors to be seized, if acting in good faith, he is not liable criminally for requesting third persons present in his courtroom to sample the liquor to ascertain whether it is ardent spirits, to assist him in determining whether there had been a violation of the liquor law."

The bystanders' verdict, however, was that the stuff in question was "a poor grade of corn liquor"—one of them averring that "if 'twas whisky, it was the meanest stuff he ever tasted." Better luck next time!

Defoe on Law.—In Defoe's "Elegy on the Author of the True Born Englishman," we find the following lines:

"Law is a great Machine of State,
With Hooks and Screws to make it operate;
Which, as they are wound up by Art,
With ease perform the fatal part;
Exactly answer to the Workmen's Skill,
This way 'twill work to save, or that to kill.
* * * * * * *
It learns to change with every Turn of Times,
And rings the Time 'tis set to, like the Chimes."